

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5019 of 1996

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For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

MAHENDRA MOHAN CHHARA

Versus

STATE OF GUJARAT

Appearance:

MR RG CHHARA for Petitioner
Mr.L.R. Pujari, learned A.G.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 09/10/96

ORAL JUDGMENT :

1. Through this Special Civil Application the petitioner seeks to challenge the detention order dated 17-4-96 passed by the Police Commissioner, Ahmedabad City whereby the petitioner was detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order is said to have been executed on 18-4-96 and since then the petitioner is under detention lodged at Surat District Jail.

2. This Special Civil Application was filed in this Court on 11-7-96 and on 12-7-96 Rule returnable on 19-8-96 was issued. So far no reply has been filed on behalf of the respondents nor any affidavit-in-reply has been filed by the detaining authority.

3. The grounds of detention enclosed with the detention order show that 7 criminal cases under the Bombay Prohibition Act were registered against the petitioner in which the quantity of liquor involved is said to be between 10 and 45 liters. Out of this 7 matters, 6 were pending before the Court and in one case the police investigation was going on at the time when the detention order was passed. After noticing the allegations with reference to these criminal cases as above, the detaining authority has observed that the petitioner was engaged in the anti social activities and was carrying on the unauthorised business of country liquor, which was injuries to the public health. Reference has also been made to the Lattha Kand and the evil consequence of consumption of country liquor, although the petitioner is not concerned with the lattha Kand. According to the detaining authority the petitioner is a bootlegger and had become a problem for the public order. Reference has then been made to the incident dated 24-3-96 wherein the witness has stated that while he was passing opposite the Power House Chali he told two persons, who had consumed liquor, not to create any nuisance and in the meantime the petitioner came, he told the witness that he was interfering with his customers and showing them fear of the police. The witness was publicly beaten by the petitioner, the witness cried for help, the crowd collected and the petitioner came out with a knife and ran after the members of the crowd. The people became helter skelter and an atmosphere of terror was created. Another witness has stated with regard to the incident dated 27-3-96 that the petitioner suspecting the witness to be a police informer intercepted the witness and gave him public beating, the witness cried for help, the petitioner came out with the knife and ran after the members of the crowd, the members of the crowd became helter skelter and an atmosphere of terror was created and the public life was disturbed. The detaining authority has mentioned that the petitioner was thus beating and threatening the innocent persons publicly. Two more witnesses had stated in support of the allegations pertaining to the incidents dated 24-3-96 and 27-3-96. All the witnesses had stated that their identity be kept secret and accordingly with the aid of S.9(2) of the Act the detaining authority has

claimed privilege against the disclosure of the identity of these witnesses. The decision was taken that despite the pendency of the criminal cases, as above, against the petitioner, he had not stopped his activities in the business of unauthorised country liquor and the proceedings of externment may not serve the purpose and that it had become necessary to detain the petitioner so as to prevent him from committing the anti social activities as above.

4. Learned counsel for the petitioner has challenged the detention order on various grounds including the ground that the allegations as have been levelled against the petitioner even if taken to be correct on their face value do not constitute the case of breach of public order so as to warrant the detention and at the most it may constitute a case of breach of law and order.

5. Learned A.G.P. has supported the detention order orally.

6. I have considered the submissions made on behalf of both the sides. I need not deal with all the grounds on which the detention order is challenged because I find that the allegations, as have been levelled, do not constitute a case of breach of public order. I have already considered similar allegations in Special Civil Application No.3879 of 1996 decided on 4-10-96 and after considering the ratio of the judicial pronouncement by the Supreme Court and this Court, it has been found that the allegations, such as levelled in the present case, do not constitute the case of breach of public order and at the most it constitute a case of breach of law and order. The reasoning on which the Special Civil Application No.3879 of 1996 has been allowed apply with full force to the facts of the present case. It is, therefore, held that the detention order, as passed in this case, was not at all warranted.

7. Accordingly this Special Civil Application is allowed. The impugned detention order dated 17-4-96 passed by Police Commissioner, Ahmedabad City is hereby quashed and set aside and the petitioner's continued detention is declared to be illegal and the respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case.. Rule is made absolute.